



## C & C LAWYERS

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### TRANSLATING THE LAW: Getting across languages, cultures and legal systems

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The demand for legal translations in Macau is rapidly on the rise whilst the number of good quality translators seems appallingly insufficient. One of the reasons is that there are simply not enough people in the territory who have the necessary combined level of Portuguese and Chinese proficiency. And those who are fluent in both official languages usually end up embarking upon a legal career. Needless to say, as a bilingual jurisdiction, there is a permanent need for translations between the two official languages. There is also, however, a widespread usage of English in contracts, which comes as no surprise since English is often the only language in common between all the parties and agents involved in legal relations. This results that, in practice, the Macau SAR is a *quasi* trilingual jurisdiction, which can be attested by the efforts the Government has made in making available English translations of some of the SAR's most important pieces of legislation.

The distinctive quality of the language of the law makes its translation particularly challenging. Legal language is usually classified as an LSP (Language for Specific Purposes), but unlike other subject field specific languages, legal concepts and linguistic structures are often confined to their native jurisdiction. While scientific concepts tend to have a more universal application, leaving the translator free to find the correct terminology equivalents, legal language is etched in codes, statutes and other enactments or in traditions and practices which are native to the jurisdiction and culture which produced them. The law is thus a depository of ancient practices and usages. It is a socio-cultural practice and, as such, translation of the law is necessarily an act of communication which involves a mechanism of cultural transfer. This poses a problem for the translator, who is faced with the prospect of terminology and conceptual voids when moving from the source language (SL) to the target language

(TL), especially if the translation involves different source and target legal systems. More than a simple mediator, the translator should be seen as a text producer who creates a new text through the careful application of a chosen translation strategy.

Although this is not the venue for thick academic discourse, it is important to examine herein some of the more significant theoretical aspects that should be considered during the decision-making process of translators. Traditionally, the role of the translator was understood as a passive subject in the communicative process. For advocates of this approach, the translator is charged solely with the reproduction of the form and the substance of the source text in the target text. Translation of legal texts should therefore be as literal as possible, preserving the letter of the law. For some modern translation theorists, however, the translator should satisfy the cultural expectations of target receivers. According to this perspective, translation of legal texts ought to be receiver oriented and translation strategy ultimately determined by the communicative function or purpose of a translation. Under this functional approach, translators should adopt different strategies, choosing to focus more on the SL or the TL, according to whether the target text is to have a performative, normative or informative function. The translation of legislation which is to be vested with the force of law and court evidence should therefore be more literal, while translation of texts with informative purposes, such as judgments and awards, are allowed to be more free.

This general theory is not bullet proof. Since legal texts are subject to legal rules, legal considerations should prevail. We can consider, for instance, the cases where contracts are drafted in Macau in English language, usually by professionals of a common law background, but whose governing law is Macau SAR's. When translating such contracts for submission as evidence, the translator should not rely on the SL but on the TL instead, because the legal relation is established in Macau and the legal dispute is being adjudicated by Macau Courts.

Whether the chosen approach be a more literal or free one, there should not be, however, any excuse for translators falling in the classic pitfalls of translation. This means that, even if a translator has decided to preserve the letter of the law, false friends, incorrect syntactic structures and unnatural linguistic constructions should by no means be admissible in professional translation. Pescatore, a former Justice of the European Union, even goes further to suggest that target texts should read as if they were drafted in the TL. Naturally, all these implications of legal translations demand that, in addition to being proficient in the language pair being translated, legal translators need to have some legal background or at the very least work in close connection with legal professionals.

However, due to the above mentioned limitations of the human capital in Macau, finding qualified and competent legal translators is not always possible. In-house legal translators are therefore usually overwhelmed with huge workloads. The adopted solutions are also not often the best in what quality translations are concerned. In fact, legal translations often end up being carried out by either translators who are neither native nor proficient in the target language or they are assigned to translators who are proficient but who do not have the necessary legal background to understand the mechanisms of the law.

Faced with these difficulties, some lawyers and law offices taking work from foreign lawyers opt for outsourcing work to translators abroad. This is not a negative solution in itself, as the chances for finding qualified translators with experience and legal background is thus greater. It should be noted, however, that these translators seldom research the legislation of Macau. A possible solution for this problem could lie in employing in-house legal editors instead of translators, who would be responsible to revise, refine and conform outsourced translations to the jurisdiction of Macau.

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